

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HOCKERSON-HALBERSTADT, INC.,

V.

COSTCO WHOLESALE CORPORATION,

Defendant.

No. C03-1188L

ORDER DENYING MOTION
TO EXCLUDE OBVIOUSNESS
TESTIMONY OF JAN WHATLEY

This matter comes before the Court on a motion *in limine* filed by defendant Costco.

Wholesale Corporation (“Costco”). (Dkt. #70). Costco “conditionally” seeks to preclude Ian Whatley, the expert of plaintiff Hockerson-Halberstadt, Inc. (“HHI”), from testifying at trial about the issue of obviousness. Costco argues that HHI has moved to exclude Costco’s expert, Ray Frederickson, on the grounds that he is not a “person of ordinary skill in the art.” Costco argues that Mr. Frederickson’s qualifications are substantively identical to those of Mr. Whatley, so if the Court excludes obviousness testimony from one it must do so for both.

HHI responds that because it has not moved to exclude Mr. Frederickson's testimony on the grounds that he was not one of ordinary skill in the art, Costco's motion is moot. Indeed, HHI's motion to exclude Mr. Frederickson is based on the content and grounds for his opinions, not based on his experience and qualifications. The Court also is persuaded by HHI's argument

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1 that whether Mr. Whatley is qualified is not dependant on whether the Court finds Mr.
2 Frederickson qualified.

3 Accordingly, the Court DENIES Costco's motion to exclude the obviousness testimony
4 of Ian Whatley (Dkt. #70).

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6 DATED this 21st day of November, 2005.

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10 Robert S. Lasnik
11 United States District Judge